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In the Supreme Court of the United States

OCTOBER TERM, 1979

UNITED STATES OF AMERICA, PETITIONER

v.

HERMAN RADDATZ

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-24a) is reported at 592 F.2d 976. The memorandum orders of the district court (Pet. App. 29a-34a) are not reported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 25a-26a) was entered on February 6, 1979, and a petition for rehearing was denied on May 4, 1979

(Pet. App. 27a-28a).[1] On May 31, 1979, Mr. Justice Stevens extended the time within which to file a petition for a writ of certiorari to and including July 3, 1979. The petition was filed on that date and was granted on October 1, 1979 (A. 18). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether 28 U.S.C. 636(b)(1)(B), which allows a district court to decide a suppression motion based on the record developed before a magistrate and the magistrate's proposed findings of fact and recommendations, violates the Constitution.

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

1. Article III, Section 1 of the United States Constitution provides:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time in time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their continuance in Office.

2. The Fifth Amendment to the United States Constitution provides in pertinent part:

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[1] The court of appeals issued a corrected copy of the order denying rehearing on May 22, 1979.

> No person shall be * * * deprived of life, liberty, or property, without due process of law * * *.

3. 28 U.S.C. 636(b)(1) provides in pertinent part:

> Notwithstanding any provision of law to the contrary—
>
> (A) a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, except a motion * * * to suppress evidence in a criminal case * * *. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate's order is clearly erroneous or contrary to law.
>
> (B) a judge may also designate a magistrate to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A) * * *.
>
> (C) the magistrate shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties.
>
> Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection

is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The judge may also receive further evidence or recommit the matter to the magistrate with instructions.

STATEMENT

Following a bench trial on a stipulated record in the United States District Court for the Northern District of Illinois, respondent, a previously convicted felon, was convicted of unlawfully receiving a firearm, in violation of 18 U.S.C. 922(h).[2] Respondent was sentenced to five years' imprisonment, all but six months of which was suspended in favor of four and a half years' probation (Pet. App. 1a n.1).

1. Prior to trial, respondent moved to suppress several incriminating statements that he made to the Chicago police and agents of the Bureau of Alcohol, Tobacco and Firearms on the ground that the statements had been induced by promises of immunity in return for his cooperation. Over respondent's objection, the district court referred the suppression motion to a magistrate for an evidentiary hearing in accordance with the Federal Magistrates Act, 28 U.S.C. 636(b)(1)(B) (Pet. App. 4a).

[2] The parties agreed to allow the court to try respondent on the basis of the transcript of the suppression hearing, the statements of three witnesses, and the stipulations that respondent had previously been convicted of eight felonies and that the firearm in question had been manufactured in Florida (Pet. App. 35a-38a).

The evidence adduced at the suppression hearing showed that on August 8, 1976, two Chicago police officers arrested respondent, who was holding a pistol, for unlawful use of a weapon. Lying near respondent at the time of the arrest was another man, Jimmy Batson, who was bleeding from the left side of his head. Although Batson claimed that he had injured himself in a fall to the curb, respondent, after being informed of his constitutional rights, admitted that he had been fighting with Batson over a family matter and that he had brought a gun with him to protect himself in case any of Batson's friends tried to intercede on Batson's behalf.[3] In October 1976, the State of Illinois filed a charge against respondent arising out of the August 8 incident (Pet. App. 2a-3a, 35a-36a; Tr. 3-21, 28-29, 155-157, 249).

One month later, on November 19, 1976, Agents Paul Russell and Richard McCulloch of the Bureau of Alcohol, Tobacco and Firearms went to respondent's home to interview him about the pistol that was in his possession at the time of his arrest. The agents knew that respondent had previously been convicted of a felony. After informing respondent of his *Miranda* rights and ascertaining that he understood those rights, the agents told respondent that the gun

[3] At the hearing on the motion to suppress, respondent repeatedly denied making any statement to the arresting officers. One of the police officers, whose testimony was corroborated by the contemporaneous arrest report, specifically refuted this assertion, stating that respondent made the same incriminatory remarks both in the patrol car and then subsequently at the station house (Tr. 3-5, 14-16, 21, 31-32).

in question had at one time been owned by a West Virginia man who had been slain in an unsolved homicide. The agents sought to establish the gun's chain of possession since that time.[4] Respondent remarked that he had seized the pistol from Batson during the altercation on August 8 and that he did not know how Batson had obtained the weapon (Pet. App. 3a, 36a; Tr. 33-35, 38-42, 106-107, 110, 141, 174-178, 195-196, 213-215, 225-226).

In light of respondent's new explanation of how he had acquired the firearm, the agents asked him to describe and help them locate Batson. They told respondent that if he assisted them in finding Batson and tracing the gun they would inform the United States Attorney of his cooperation in the event he subsequently was prosecuted. Respondent replied that he would think about the matter, and he took Agent Russell's telephone number in case he decided to cooperate. Although respondent further claimed at the hearing that the agents promised that if he cooperated his impending indictment would be dismissed, both agents testified that no such promise was made (Pet. App. 5a-7a, 41a; A. 16-17; Tr. 41-42, 45, 161, 165, 179, 184-185, 196-197, 225, 236-237).

On January 12, 1977, respondent telephoned the agents and requested a meeting, explaining that he

[4] In addition, one of the officers testified that they also were "trying to determine venue; where [respondent] had come into receipt of the firearm * * *" (Tr. 225). See also Tr. 175-176, 215.

wanted to "straighten out something about the gun" (Tr. 179). The agents picked up respondent at his home and drove him back to their office. After the agents had again advised respondent of his constitutional rights, he retracted his prior story and admitted that he had not taken the gun from Batson on August 8, but in fact had obtained it from his half-brother approximately one week earlier. In addition, respondent describe in detail his knowledge of the prior history of the gun (Pet. App. 3a, 36a-37a; Tr. 36-38, 162, 179-180, 186-187, 197-199).[5]

At the suppression hearing, respondent admitted that his statement on November 19 was false and that on January 12 he had made the inculpatory statements attributed to him by the agents. He claimed, however, that he had incriminated himself on January 12 only after ascertaining that the agents' alleged immunity offer of November 19 was still in effect. In contrast, the agents testified that at no time was respondent offered immunity. Rather, the agents claimed that, following respondent's volunteered admissions, they asked him to assist in locating the persons who had previously possessed the firearm or any other persons involved in illegal gun dealing. Respondent indicated that he was willing to cooperate but that he needed money to make contact with gun sources. Accordingly, the agents gave respondent $10

[5] Respondent's half-brother had apparently purchased the gun from Bobby Mason in exchange for drugs. Mason, in turn, had obtained the gun from two persons who allegedly had stolen it somewhere in the South (Tr. 141-144, 179).

and then accompanied him on an unsuccessful attempt to purchase firearms (Pet. App. 3a, 5a, 36a-37a, 41a; A. 16-17; Tr. 103-108, 110-113, 123, 161-162, 179-180, 184-188, 197-202, 230, 236-237).[6]

Finally, on January 14, 1977, respondent returned to the ATF office, this time accompanied by his former wife and her children. Agent McCulloch and his supervisor informed respondent that his case had been referred to the United States Attorney for prosecution and that upon federal indictment the state charges against him would be dropped.[7] The ATF agents also discussed with respondent the possibility of his becoming an informant and again promised that any cooperation in that regard would be brought to the attention of the United States Attorney. Respondent stated that he was willing to work as an informant but that he had no money to travel about and pick up information. Agent McCulloch then gave respondent $50. However, respondent thereafter never produced any information, arranged any firearms transactions, or otherwise acted as an informant (Pet. App. 5a-6a; A. 17; Tr. 81-82, 121, 200-203, 207, 222-224, 237-238, 242-248).

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[6] Respondent claimed to be looking for a firearm dealer named Ochenbach. Respondent never set up a meeting between the agents and Ochenbach, however, and the agents were unable to discover whether Ochenbach actually existed (Tr. 199-201, 228-229).

[7] The state charges against respondent were dismissed on February 22, 1977 (Tr. 157, 249). Respondent's federal indictment was filed on March 1, 1977 (Pet. App. 3a).

2. After holding the evidentiary hearing and considering the parties' written and oral submissions, the magistrate filed proposed findings of fact and recommendations for the disposition of respondent's suppression motion in accordance with 28 U.S.C. 636 (b) (1) (B) and (C). The magistrate found that respondent knowingly, intelligently and voluntarily made inculpatory statements on three separate occasions, after having been informed of his *Miranda* rights on each occasion. Moreover, the magistrate expressly found that the testimony of the ATF agents was more credible than the story offered by respondent (who had previously been convicted of eight different felonies, including attempted murder and armed robbery), and he specifically rejected respondent's claim that the agents had promised him immunity from prosecution in return for his cooperation. Accordingly, the magistrate recommended that respondent's motion to suppress his statements of August 8 and November 19, 1976, and January 12, 1977, be denied (Pet. App. 39a-41a; Tr. 123-124).

3. Respondent filed objections to the magistrate's report with the district court. Pursuant to 28 U.S.C. 636 (b) (1) (C), the district court made a de novo determination of respondent's suppression motion based on a review of the transcript of the evidentiary hearing before the magistrate, the magistrate's proposed findings and recommendations, and the submissions of counsel. The court accepted the recommendation of the magistrate and expressly adopted the government's proposed findings of fact as its own (Pet.

App. 34a; A. 15-17). In particular, the court concluded that respondent had voluntarily chosen to make statements to the agents on the three days in question. It therefore denied the motion to suppress (Pet. App. 33a-34a).[8]

4. The court of appeals reversed and remanded (Pet. App. 1a-24a). The court first addressed respondent's statutory claims. It concluded that both the local court rules[9] and 28 U.S.C. 636(b)(1)(B) authorized the reference of respondent's suppression motion to a magistrate. In addition, in reliance on the language and legislative history of Section 636 (b), the court held that the trial judge's decision to deny respondent's motion to suppress after reviewing the transcript of the evidentiary hearing, the magistrate's report, and the submissions of the parties, but without hearing the live testimony itself, did not constitute an abuse of discretion under the statute (*id.* at 8a-14a).

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[8] The district court also denied respondent's motion to dismiss the indictment (Pet. App. 29a-31a). Respondent erroneously claimed that he should have been charged with violating 18 U.S.C. App. 1202(a), rather than Section 922(h), because the two statutes overlap and the former carries a lesser maximum penalty than the latter. See *United States* v. *Batchelder*, No. 78-776 (June 4, 1979).

[9] Local Magistrate Rule 1.01B(8) of the United States District Court for the Northern District of Illinois provides that a federal magistrate may assist the district court "in the conduct of pretrial proceedings" in a criminal case. The court of appeals construed this rule to cover the reference of a motion to suppress.

The court of appeals then addressed respondent's constitutional arguments based on Article III and the Due Process Clause. The court found that, because the statute requires the district court to make a de novo determination of any disputed portion of the magistrate's report or proposed findings or recommendation, reference of a suppression motion to a magistrate in accordance with Section 636(b)(1)(B) is not an unconstitutional delegation of judicial authority in violation of Article III (Pet. App. 14a). The court of appeals held, however, that where conflicting evidence is presented at a suppression hearing, the defendant is deprived of due process if the district court denies his motion to suppress without rehearing the controverted testimony. In the court of appeals' view, at least where "credibility is crucial to the outcome," a "district court cannot constitutionally exercise its discretion to refuse to hold a hearing on contested issues of fact in a criminal case" (*id.* at 24a). The court therefore remanded for another suppression hearing to be conducted personally by the district court judge (*id.* at 15a-24a).[10]

SUMMARY OF ARGUMENT

I

As the court of appeals concluded, the pretrial proceedings in this case complied with the terms of the Federal Magistrates Act, 28 U.S.C. 631 *et seq.*

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[10] The court of appeals denied the government's petition for rehearing en banc on May 4, 1979, with two judges dissenting (Pet. App. 27a-28a & n.*).

The district court properly designated a magistrate to conduct an evidentiary hearing regarding respondent's suppression motion. Following a full and fair hearing, the magistrate credited the testimony of several government agents and recommended that respondent's motion to suppress be denied. Thereafter the district court made a de novo determination of the motion by reviewing the evidence adduced before the magistrate, the magistrate's report, and the submissions of the parties. The court concluded that respondent's inculpatory statements were made voluntarily, and it therefore rejected his suppression claim.

Nothing in the Act requires a district court to rehear testimony previously evaluated by the magistrate. Section 636(b)(1)(C) mandates that the court make a "de novo determination" of a pretrial motion, not that it conduct a second, redundant suppression hearing. Moreover, the legislative history confirms that the "use of the words 'de novo determination' is not intended to require the judge to actually conduct a new hearing on contested issues." H.R. Rep. No. 94-1609, 94th Cong., 2d Sess. 3 (1976). See also 122 Cong. Rec. 35182-35183 (1976) (remarks of Rep. Railsback). Indeed, construing "de novo determination" to mean "de novo hearing" would thwart the clear congressional purpose underlying the Act by discouraging trial judges from using the services of magistrates to preside over pretrial hearings in a substantial number of cases.

II

The court of appeals correctly rejected respondent's claim that the Act violates Article III of the Constitution. Article III permits but does not require Congress to create lower federal courts. Thus, as was the situation in the early history of this country, Congress could allow the non-Article III state courts to adjudicate all federal questions, including those arising in federal criminal prosecutions. Moreover, this Court has confirmed that Congress, in the appropriate exercise of its constitutional powers, may also create Article I or "legislative" tribunals to conduct federal civil and criminal proceedings. See *Palmore* v. *United States*, 411 U.S. 389 (1973). Hence, there is no unyielding requirement that all facets of the federal judicial power be exercised only by Article III courts.

We believe that, in light of this Court's decisions, Congress could have created an independent Article I magistrate's court to determine suppression claims. For example, in *Palmore* v. *United States*, *supra*, the Court upheld the transfer of entire criminal cases to Article I tribunals, whereas the Act at most delegates certain pretrial proceedings to magistrates. Here, as in *Palmore*, Congress could constitutionally have created a non-Article III tribunal to aid the district courts in their more critical work by relieving the courts of the time consuming responsibility of presiding over pretrial evidentiary hearings.

In any event, 28 U.S.C. 636(b)(1)(B) and (C) do not establish an independent magistrate's court. Rather, Congress carefully limited the magistrate's

functions to those traditionally performed by Article III adjuncts such as masters and commissioners. The district court retains complete control over its cases, because it has plenary power to appoint and remove magistrates and exercises total discretion whether to assign such pretrial matters to a magistrate as seem appropriate. In the event of a delegation of a motion to suppress, the magistrate conducts an evidentiary hearing and tenders proposed findings of fact and recommendations to the district court. The court then determines the issue de novo by reviewing the evidence adduced at the hearing, the magistrate's report, and the submissions of the parties.

The magistrate thus acts as an advisory factfinder within the context of the Article III court. Because the district court retains "the ultimate adjudicatory power over [suppression] motions" (H.R. Rep. No. 94-1609, 94th Cong., 2d Sess. 11 (1976)), the fact that the magistrate and not the court presides over the evidentiary hearing does not violate Article III. See, *e.g.*, *Crowell* v. *Benson*, 285 U.S. 22, 51-52 (1932) ("there is no requirement that, in order to maintain the essential attributes of the judicial power, all determinations of fact in constitutional courts shall be made by judges"). Accordingly, the overwhelming weight of authority supports the conclusion that Article III does not preclude a magistrate from conducting an evidentiary hearing. See, *e.g.*, *Wingo* v. *Wedding*, 418 U.S. 461, 486-487 & n.11 (1974) (Burger, C.J., dissenting) (collecting authorities).

III

The court of appeals erroneously concluded that the pretrial proceedings in this case deprived respondent of due process of law. In the court of appeals' view, the district court was required either to defer to the magistrate's factual finding (a possibility foreclosed by 28 U.S.C. 636(b)(1)(C)) or to rehear the actual testimony adduced at the suppression hearing. At least in the circumstances of this case, where the district court agreed with the magistrate's recommendation, that analysis makes little sense. If the district court had deferred to the magistrate, it obviously would have again accepted the magistrate's findings and would have again denied respondent's suppression motion. That the court undertook a more thorough review of the magistrate's findings and the record as a whole in ruling on the motion cannot have deprived respondent of due process.

Due process, of course, is a flexible concept, dependent on the assessment of a number of important considerations. In *Mathews* v. *Eldridge*, 424 U.S. 319, 335 (1976), this Court specified three factors that should be considered in determining what process is due in a particular circumstance:

> First, the private interest that will be affected by the official action; ~~section~~ Second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and

administrative burdens that the additional or substitute procedural requirement would entail.

The procedures set forth in the Act accommodate these competing interests in a constitutionally permissible way.

First, the court of appeals erroneously equated the defendant's interest in the outcome of the suppression motion with that in the criminal trial itself. A motion to suppress evidence, however, implicates the defendant's right to be free from unconstitutional governmental conduct, and the societal interest in deterring such misconduct, and not the defendant's more fundamental life, liberty or property interest in an accurate determination of guilt or innocence. See, *e.g.*, *Lego* v. *Twomey*, 404 U.S. 477, 484-489 (1972); *United States* v. *Janis*, 428 U.S. 433, 453-454 (1976). Accordingly, it is well settled that the process due at a pretrial suppression hearing is considerably less elaborate than the protections accorded the defendant at trial. For example, hearsay is admissible at suppression hearings, although it would not be admissible at trial, and the government's burden of proof at the pretrial hearing is a preponderance of the evidence rather than beyond a reasonable doubt.

Moreover, "[s]ince the purpose that a voluntariness hearing is designed to serve has nothing whatever to do with improving the reliability of jury verdicts," *Lego* v. *Twomey*, *supra*, 404 U.S. at 486, reference of a suppression motion to a magistrate poses no risk that a defendant will be erroneously

convicted. Particularly where, as here, the district court adopts the magistrate's findings, determination of a suppression motion in accordance with the Act is substantially reliable. The requirement of a de novo hearing in every case involving conflicting testimony might occasionally change the result of such a motion, but there is no reason to believe that the changed results would be any more accurate. Indeed, most administrative agencies employ factfinding procedures quite similar to those challenged here. An administrative law judge hears the actual testimony and makes the initial findings of fact. Thereafter the agency itself enters the administrative findings based on a de novo review of the record. The validity of such procedures is beyond dispute. See, *e.g.*, *Morgan* v. *United States*, 298 U.S. 468 (1936); *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474, 492-497 (1951).

Finally, the court of appeals failed to consider the substantial governmental interests underlying the Act or the major fiscal and administrative burdens that a two-hearing requirement would impose. The Act is designed to relieve the overburdened district courts so that judges may allocate their scarce time and resources to conducting trials and rendering legal decisions. Congress recognized that it could create additional judgeships to handle the flood of litigation. It reasonably concluded, however, that the extensive use of magistrates, particularly with regard to pretrial factual matters, would be a more efficient, more flexible, and less expensive solution to the prob-

lem. If affirmed, the court of appeals' decision will frustrate these important goals by forcing district courts either to conduct a second evidentiary hearing in a large number of cases or, as is more likely, to dispense with the use of magistrates altogether.

ARGUMENT

At issue in this case is the constitutionality of the Federal Magistrates Act ("the Act"), 28 U.S.C. 636 (b). The court of appeals correctly concluded that the Act authorizes a district court to refer a suppression motion to a magistrate for an evidentiary hearing and thereafter to decide the motion based solely on its review of the testimony adduced before the magistrate, the magistrate's report and recommendations, and the submissions of the parties. See 28 U.S.C. 636(b)(1)(B) and (C); point I, *infra*. Although respondent apparently acknowledges that the pretrial proceedings that occurred here comport with the Act, he nonetheless contends that the Act, at least as applied in this case, violates the Constitution. In our view, however, referral of a suppression motion to a magistrate does not vitiate the guarantees of Article III, particularly where, as here, the district court makes an independent ("de novo") determination of the suppression issue. See point II, *infra*. Furthermore, we submit that the Due Process Clause does not require that the district court actually rehear the live testimony previously adduced before the magistrate. See point III, *infra*.

I. THE FEDERAL MAGISTRATES ACT PERMITS A DISTRICT COURT TO MAKE A "DE NOVO DETERMINATION" OF A SUPPRESSION MOTION BASED ON THE PROCEEDINGS BEFORE A MAGISTRATE AND WITHOUT REHEARING THE TESTIMONY OF THE WITNESSES

As the court of appeals concluded, the pretrial proceedings in this case did not violate the Act. Indeed, we do not understand respondent to contend otherwise. Nonetheless, it is useful to begin with a discussion of the Act itself, both because the Court need only consider the constitutional issues presented if the proceedings below complied with the statute and because a brief summary of the background and structure of the Act will aid in the constitutional analysis. As we show below, the language, legislative history, and purpose of 28 U.S.C. 636(b)(1)(C) demonstrate conclusively that a district court may make a "de novo determination" of a suppression motion without hearing anew the testimony previously adduced before the magistrate.

A. Introduction

The Federal Magistrates Act, which was enacted in 1968, "created a system of full-time and part-time judicial officers who would perform various judicial duties under the supervision of the district courts in order to assist the judges of these courts in handling an ever-increasing caseload." S. Rep. No. 94-625, 94th Cong., 2d Sess. 2 (1976); H.R. Rep. No. 94-1609, 94th Cong., 2d Sess. 4 (1976); see *Mathews* v. *Weber*, 423 U.S. 261, 267-270 (1976). The origi-

nal version of the Act empowered magistrates to do the work previously carried out by federal commissioners, to try certain petty misdemeanors, and to perform "such additional duties as are not inconsistent with the Constitution and laws of the United States." 28 U.S.C. (1970 ed.) 636(a) and (b). Although the open-ended language of the original Act was designed to encourage district court experimentation (see S. Rep. No. 371, 90th Cong., 1st Sess. 26 (1967)), the phrase "such additional duties * * *" in fact resulted in substantial appellate litigation, much of it adverse to Congress' apparent intent. See, *e.g.*, *Wingo* v. *Wedding*, 418 U.S. 461 (1974); *id.* at 487 (Burger, C.J., dissenting) (urging Congress to clarify the Act): H.R. Rep. No. 1609, *supra*, at 5-6.

Accordingly, in 1976, Congress amended the Act "in order to clarify and further define the additional duties which may be assigned to a United States Magistrate in the discretion of a judge of the district court." S. Rep. No. 94-625, *supra*, at 1; H.R. Rep. No. 94-1609, *supra*, at 2.[11] In particular, the 1976 amendment firmly established that magistrates could conduct hearings with regard to any pretrial motion in either civil or criminal cases. See Pub. L. No. 94-577, 90 Stat. 2729 (codified at 28 U.S.C. 636 (b)(1)(A) and (B)); see, *e.g.*, *Orand* v. *United*

[11] The Act was further amended on October 10, 1979, to permit a magistrate, upon consent of the parties, to conduct any civil or criminal (misdemeanor) trial. See Federal Magistrate Act of 1979, Pub. L. No. 96-82, 93 Stat. 643. This amendment does not change Section 636(b) or affect the issues posed by this case.

States, 602 F.2d 207 (9th Cir. 1979). Thus, with regard to most preliminary motions, Section 636(b)(1)(A) states that a district court may "designate a magistrate to hear and determine" the motion and that the magistrate's decision is final, subject to review by the district court on a "clearly erroneous or contrary to law" standard. See H.R. Rep. No. 94-1609, *supra*, at 9-10.

Certain "dispositive motions,"[12] including "a motion * * * to suppress evidence in a criminal case," are, however, excepted from the scope of Section 636(b)(1)(A). As to these motions, Section 636(b)(1)(B) provides that a district judge may "designate a magistrate to conduct hearings, including evidentiary hearings, and to submit to [the] judge * * * proposed findings of fact and recommendations for the disposition, by [the] judge * * *, of [the] motion." After holding the suppression hearing, the magistrate files his proposed findings and recommendations with the court and serves a copy of his report on the parties. 28 U.S.C. 636(b)(1)(C). Within 10 days of receiving the report, any party may "file written objections to such proposed findings and recommendations." *Ibid.* Thereafter the district court is free to "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magis-

[12] See S. Rep. No. 94-625, *supra*, at 9; H.R. Rep. No. 94-1609, *supra*, at 10. Other so-called "dispositive motions" include motions to quash an indictment, habeas corpus petitions, and motions for summary judgment and injunctive relief See 28 U.S.C. 636(b)(1)(A).

trate," based on its "de novo determination" of the suppression motion. In addition, Section 636(b)(1)(C) states that the court "may also receive further evidence or recommit the matter to the magistrate with instructions."

B. A "De Novo Determination" Of A Suppression Motion Does Not Entail A Second Evidentiary Hearing

1. Nothing in the language of Section 636(b)(1)(C) suggests that Congress intended to require a district court to hear anew the testimony already heard and evaluated by the magistrate. To the contrary, it is apparent that Congress sought to relieve the district court of the burden of conducting an evidentiary hearing with regard to every pretrial motion. Thus, the Act mandates only that the district court make a de novo *determination* of a suppression motion based on various written submissions and not that the court hold a de novo *hearing*. See, *e.g.*, *United States* v. *Leiberman*, No. 78-1465 (1st Cir. Nov. 7, 1979), slip. op. 20-21; *Muhich* v. *Allen*, 603 F.2d 1247, 1252 (7th Cir. 1979); *Orand* v. *United States*, *supra*, 602 F.2d at 208-209; *United States* v. *Whitmore*, 595 F.2d 1303, 1305-1306 & n.1 (5th Cir. 1979), petition for cert. pending, No. 79-375. Where Congress thought it appropriate for the district court to "hear the evidence" previously heard by the magistrate, such as in the case of contempt committed before the magistrate, Congress so specified. See 28 U.S.C. 636(d).[13]

[13] The Federal Magistrates Act of 1979 redesignates Section 636(d) as Section 636(e). See note 11, *supra*.

Moreover, the last sentence of Section 636(b)(1)(C), which provides that the district judge "may also receive further evidence," strongly indicates that a "de novo determination" is something other than a de novo hearing. If Congress had intended that the district court's de novo determination of a suppression motion involve a second evidentiary hearing, there would have been no need to specify that the court has the discretionary power to hear actual testimony if it wishes to do so. The conclusion that the "de novo determination" requirement imposes a duty on the district court to rehear live testimony thus renders the last sentence of Section 636(b)(1)(C) mere surplusage and consequently "offends the well-settled rule of statutory construction that all parts of a statute, if at all possible, are to be given effect." *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 633 (1973). See, *e.g.*, *Reiter* v. *Sonotone*, No. 78-690 (June 11, 1979), slip op. 5; *Jarecki* v. *G. D. Searle & Co.*, 367 U.S. 303, 307 (1961).

Furthermore, construing Section 636(b)(1)(C) to require the district court to hold a redundant evidentiary hearing "would be to impute to Congress a purpose to paralyze with one hand what it sought to promote with the other." *Clark* v. *Uebersee Finanz-Korporation*, 332 U.S. 480, 489 (1947); see *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, *supra*, 412 U.S. at 631. The Act evidences a clear congressional purpose to alleviate the increasing congestion of litigation in the district courts. See, *e.g.*, *Mathews* v. *Weber*, *supra*, 423 U.S. at 266-269; *Wingo* v. *Wed-*

ding, 418 U.S. 461, 463 (1974); S. Rep. No. 371, 90th Cong., 1st Sess. 8-12 (1967); H.R. Rep. No. 94-1609, *supra*, at 4-8; S. Rep. No. 94-625, *supra*, at 2-6; H.R. Rep. No. 96-287, 96th Cong., 1st Sess. 2-5, 19-20 (1979); S. Rep. No. 96-74, 96th Cong., 1st Sess. 1-3 (1979).[14] That purpose would be substantially undermined if the statute were held to mandate a duplicative hearing before the district court whenever a party objected to a magistrate's proposed finding or even whenever the magistrate's recommendation was based on his evaluation of conflicting testimony.

In other words, if the statute were read to mandate a rehearing where, as here, there is a conflict in testimony, then two hearings would be required with regard to many, if not most, dispositive pretrial mo-

[14] See generally *Federal Magistrates Act: Hearings on S. 3475 and S. 945 Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary*, 89th Cong., 2d Sess. and 90th Cong., 1st Sess. 15-17, 25-37, 45-47, 52-54, 91-98, 210-222, 236 (1966-1967); *Federal Magistrates Act: Hearings on S. 945, etc., Before Subcomm. No. 4 of the House Comm. on the Judiciary*, 90th Cong., 2d Sess. 65-81, 96-104, 117-120, 127-131, 150-158 (1968); *Jurisdiction of United States Magistrates: Hearing on S. 1283 Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary*, 94th Cong., 1st Sess. 1-20, 33-40 (1975); *Magistrate Act of 1977: Hearings on S. 1612 and S. 1613 Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary*, 95th Cong., 1st Sess. 1-6, 14-28, 47-55, 90-95 151-158, 180-182 (1977); *Hearings on Magistrates Reform Before the Subcomm. on Courts, Civil Liberties, and the Administration of Justice of the House Comm. on the Judiciary*, 95th Cong., 1st Sess. 55-57, 86-99, 123-127, 152-160, 182-185, 188-191, 409-485 (1977).

tions. An evidentiary hearing obviously is unnecessary if the facts are uncontested; in such cases the court can decide the legal issues without resort to a magistrate. It is only where the evidence is in dispute that the magistrate has a useful role to play. Hence, a two hearing requirement would undoubtedly terminate the heretofore common practice of assigning pretrial hearings to magistrates. See *1979 Annual Report of the Director of the Administrative Office of the United States Courts* A-144 to A-145 (Table M-4) (in FY 1979, magistrates handled a total of 18,027 Section 636(b)(1)(B) motions).[15] Rather than waste the resources of the court, including courtroom space and court reporters, and the time of the magistrate, counsel and witnesses in a dress rehearsal, the district court would conduct the pretrial hearing itself in the first instance, at least where there was a fair possibility that a conflict in testimony would arise. As a result, the congressional purpose to encourage the use of magistrates to conduct pretrial hearings "as a means of freeing time of district court judges to preside at trials" would be frus-

[15] Most suppression motions involve credibility determinations. See, *e.g.*, *Davis* v. *North Carolina*, 384 U.S. 737, 741 (1966). Therefore, even if the language of the statute could somehow be construed to necessitate two hearings only in suppression cases involving conflicting testimony, the impact would be substantial. In FY 1979, magistrates made recommendations on 1,604 criminal motions pursuant to Section 636(b)(1)(B)—an increase of more than 21% over the previous year. Compare *1979 Annual Report, supra*, at A-144 with *1978 Annual Report of the Director of the Administrative Office of the United States Courts* A-144 (Table M-4).

trated. See H.R. Rep. No. 94-1609, at 4, 7. See also S. Rep. No. 94-625, *supra*, at 3-5; *Jurisdiction of United States Magistrates: Hearing on S. 1283 Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary*, 94th Cong., 1st Sess. 1, 4, 36 (1975).

2. In any event, the legislative history forecloses any argument on this point. The original Senate version of the 1976 amendment did not contain the "de novo determination" language. See S. 1283, 94th Cong., 2d Sess. (1975), reprinted in S. Rep. No. 94-625, *supra*, at 2. In order to clarify "the type of review afforded a party who takes exceptions to a magistrate's findings and recommendations in [accordance with Section 636(b)(1)(C)]," the House added the "de novo determination" imperative. See H. R. Rep. No. 94-1609, *supra*, at 3. The House Report accompanying the 1976 amendment unambiguously states (*ibid.*):

> The use of the words "de novo determination" is not intended to require the judge to actually conduct a new hearing on contested issues. Normally, the judge, on application, will consider the record which has been developed before the magistrate and make his own determination on the basis of that record, without being bound to adopt the findings and conclusions of the magistrate.

See also *id.* at 11; 122 Cong. Rec. 35182-35183 (1976) (remarks of Rep. Railsback); *Hearings on S. 1283*, *supra*, at 4.

H.R. Rep. No. 94-1609 further explains that "[t]he approach of the Committee, as well as that of the

Senate, is adopted from the decision of the United States Court of Appeals for the Ninth Circuit in *Campbell* v. *United States District Court for the Northern District of California*, 501 F.2d 196 (9th Cir.), cert. denied, 419 U.S. 879 (1974)." H.R. Rep. No. 94-1609, *supra*, at 3. In *Campbell*, the court of appeals held that a district court could refer a suppression motion to a magistrate and then make a "de novo determination" of the motion based on the record adduced before the magistrate and the magistrate's recommendations. See 501 F.2d at 206.[16] The court specifically noted that the district court "may, in the exercise of its discretion, call and hear the testimony of a witness or witnesses in an adversary proceeding [, but i]t is *not required to hear any witness and not required to hold a de novo hearing of the case.*" *Id.* at 206-207 (emphasis supplied), quoted with approval in H.R. Rep. No. 94-1609, *supra*, at 3-4. See also *id.* at 6; *Hearings on S. 1283*, *supra*, at 23.

Finally, Congress has recently confirmed that the Act does not impose a double hearing requirement in the event of a reference of a suppression motion to a magistrate. The legislative history of the 1979 amendment to the Act (see note 11, *supra*) reemphasizes that a "de novo determination" is not a "de novo hearing." For example, the pertinent Senate Report

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[16] *Campbell*, of course, was decided under the original version of the Act, which provided that magistrates could take on "such additional duties as are not inconsistent with the Constitution and laws of the United States." See 501 F.2d at 201; page 20, *supra*.

states that, consistent with congressional intent, the Act has "facilitated a rational division of labor among judicial officers in the district court, as *the magistrate would relieve the judge from personally hearing each and every pretrial motion* or proceeding in the preparation of a case for trial." S. Rep. No. 96-74, 96th Cong., 1st Sess. 4 (1979) (emphasis supplied). Similarly, both the Senate and House Hearings on the 1979 amendment reflect Congress' clear understanding that "the words 'de novo determination' in subparagraph 636(b)(1)(C) do *not* require the judge to actually conduct a new hearing on contested issues." *Magistrate Act of 1977: Hearings on S. 1612 and S. 1613 Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary*, 95th Cong., 1st Sess. 37 (1977) (emphasis in original). See also *Hearings on Magistrates Reform Before the Subcomm. on Courts, Civil Liberties and the Administration of Justice of the House Comm. on the Judiciary*, 95th Cong., 1st Sess. 167, 257 (1977). Such subsequent legislative history is entitled to significant weight where, as here, Congress has unequivocally stated its views in the course of amending the statute. See *Lorillard* v. *Pons*, 434 U.S. 575, 580-581 (1978).

II. REFERENCE OF A SUPPRESSION MOTION TO A MAGISTRATE FOR AN EVIDENTIARY HEARING IN ACCORDANCE WITH 28 U.S.C. 636(b)(1)(B) AND (C) DOES NOT VIOLATE ARTICLE III OF THE CONSTITUTION

In the courts below, respondent contended that Article III of the Constitution barred reference of his

suppression motion to a magistrate. The court of appeals rejected this claim, observing that Congress had "avoid[ed] any such objections by requiring that a district court judge 'shall make a de novo determination' on contested aspects of a magistrate's recommendation in case dispositive motions" (Pet. App. 14a). As we now demonstrate, the court of appeals' conclusion is manifestly correct.

A. A Motion To Suppress Evidence In A Federal Criminal Prosecution Need Not Be Heard In A Court Created Under Article III

1. Article III of the Constitution establishes the framework for the judicial branch of the federal government. Section 1 of Article III provides that the "judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." Judges of Article III courts hold office during their good behavior and their salaries may not be reduced during their tenure. Article III further states that the "judicial Power shall extend" to various classes of cases, including those "arising under * * * the laws of the United States" (Section 2). Although it therefore follows that an Article III judge may conduct a suppression hearing as part of a federal criminal prosecution, nothing in the text or history of Article III or in this Court's decisions suggests that *only* an Article III judge is constitutionally permitted to conduct such a hearing.[17]

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[17] At the outset, we submit that Congress' considered judgment that the Act satisfies Article III is entitled to deference. To be sure, "[i]t is, emphatically, the province and duty of

Section 1 of Article III permits rather than directs Congress to create lower federal courts. See *Palmore* v. *United States*, 411 U.S. 389, 400-402 (1973); *Cary* v. *Curtis*, 44 U.S. (3 How.) 236, 245 (1845). That discretionary power was the result of a compromise at the Constitutional Convention of 1787 between those who favored a strong national government with an independent judiciary and those who thought that the state courts should adjudicate questions of federal law subject to appellate review in a supreme court. See M. Farrand, *The Records of the Federal Convention of 1787*, Vol. 1, at 124-127, and Vol. 2, at

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the judicial department, to say what the law is." *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). But it is also true that an act of Congress is presumptively constitutional and that that presumption is particularly strong where Congress has analyzed the constitutionality of a proposed statute in considerable detail. See, *e.g.*, *United States* v. *Nixon*, 418 U.S. 683, 703 (1974); *Palmore* v. *United States*, 411 U.S. 389, 409 (1973); *Katzenbach* v. *McClung*, 379 U.S. 294, 303-304 (1964). See also *Glidden Co.* v. *Zdanok*, 370 U.S. 530, 541-543 (1962). Here, after consulting various authorities and debating the matter at length, Congress has repeatedly asserted its firm view on the validity of the Act. See, *e.g.*, S. Rep. No. 371, *supra*, at 12, 25; S. Rep. No. 94-625, *supra*, at 6; H.R. Rep. No. 94-1609, at 8; S. Rep. No. 96-74, *supra*, at 6; H.R. Rep. No. 96-287, *supra*, at 7-9, 20, 31-33; *Federal Magistrates Act: Hearings on S. 3475 and S. 945 Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary*, 89th Cong., 2d Sess. and 90th Cong., 1st Sess. 111-195, 246-258 (1966-1967); *Hearings on S. 1283*, *supra*, at 6; *Hearings on the Magistrate Act of 1977*, *supra*, at 29, 158-159, 185, 191; *Hearings on Magistrates Reform*, *supra*, at 99-109, 189, 419-427. See also *Mathews* v. *Weber*, *supra*, 423 U.S. at 269-270.

45-46 (1966); *The Federalist* Nos. 80-82 (A. Hamilton); Warren, *New Light on the History of the Federal Judiciary Act of 1789*, 37 Harv. L. Rev. 49, 52-57 (1923). Indeed, as the Framers had anticipated, "[d]uring most of the Nation's first century, Congress relied on the state courts to vindicate essential rights arising under the Constitution and federal laws." *Zwickler* v. *Koota*, 389 U.S. 241, 245 (1967); see also *Glidden Co.* v. *Zdanok*, 370 U.S. 530, 551 (1962) (plurality opinion); *Palmore* v. *United States*, *supra*, 411 U.S. at 401-402; *Swain* v. *Pressley*, 430 U.S. 372, 383 n.17 (1977).

Thus, it is settled that Congress may refuse to create Article III courts, it may establish such courts but with limited jurisdiction,[18] and it may withdraw such jurisdiction once conferred. See, *e.g.*, *Carey* v. *Curtis*, *supra*, 44 U.S. (3 How.) at 245; *Sheldon* v. *Sill*, 49 U.S. (8 How.) 440 (1850); *Lockerty* v. *Phillips*, 319 U.S. 182 (1943); *Glidden Co.* v. *Zdanok*, *supra*, 370 U.S. at 551-552. Moreover, Congress' power in this regard is not limited either to establishing Article III courts to adjudicate federal questions or to delegating that task to existing state courts. Rather, Congress may create so-called "legis-

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[18] It was not until 1875 that Congress authorized the lower federal courts to exercise general "federal question" jurisdiction, and even then the state courts retained concurrent jurisdiction over many "federal" cases and exclusive jurisdiction over cases not satisfying the jurisdictional amount requirement. See Act of March 3, 1875, ch. 137, Section 1, 18 Stat. 470; *District of Columbia* v. *Carter*, 409 U.S. 418, 427-428 n.20 (1973).

lative" or Article I courts to decide inherently judicial matters arising under the Constitution and laws of the United States without violating Article III. See, *e.g.*, *American Insurance Co.* v. *Canter*, 26 U.S. (1 Pet.) 511 (1828) (territorial courts); *In re Ross*, 140 U.S. 453, 464-465, 480 (1891) (consular courts); *Ex parte Bakelite Corp.*, 279 U.S. 438 (1929) (customs courts); *Crowell* v. *Benson*, 285 U.S. 22, 48-65 (1932) (administrative proceedings); *Williams* v. *United States*, 289 U.S. 553 (1933) (court of claims); *Reconstruction Finance Corp.* v. *Bankers Trust Co.*, 318 U.S. 163, 168-171 (1943) (bankruptcy proceedings before the Interstate Commerce Commission).[19]

[19] The court stated in *Crowell* that Article III courts must be allowed to determine so-called jurisdictional facts, that is, facts relating to Congress' constitutional power to act in a particular area. 285 U.S. at 54-61. (In *Crowell* those facts involved whether the claimant under the Longshoremen's and Harbor Workers' Compensation Act was an employee working on the navigable waters at the time of the accident). Both the subsequent opinions of this Court and the commentators strongly suggest that this aspect of *Crowell* retains little or no vitality. See, *e.g.*, *St. Joseph Stock Yards Co.* v. *United States*, 298 U.S. 38, 84 (1936) (Brandeis, J., concurring); *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 49-52 (1938); *Estep* v. *United States*, 327 U.S. 114, 142 (1946) (Frankfurter, J., dissenting); P. Bator, P. Mishkin, D. Shapiro, H. Wechsler, *Hart and Wechsler's The Federal Courts and The Federal System* 339-340 (2d ed. 1973). W. Gellhorn & C. Byse, *Administrative Law* 419-427 (6th ed. 1974); 4 K. Davis, *Administrative Law Treatise* § 29.08 (1958). In any event, a motion to suppress does not involve the determination of jurisdictional facts, and the magistrate's role is limited to making a recommendation. See point IIB, *infra*.

The rule that federal questions need not be litigated in Article III courts applies with full force to the enforcement of the federal criminal law. Article III does not differentiate in this regard between federal criminal and civil proceedings.[20] Moreover, "[v]ery early in our history, Congress left the enforcement of selected federal criminal laws to state courts and to state court judges who did not enjoy the protections prescribed for federal judges in Art. III." *Palmore* v. *United States*, *supra*, 411 U.S. at 402. See Warren, *Federal Criminal Laws and the State Courts*, 38 Harv. L. Rev. 545, 551-553, 570-572 (1925); Act of March 2, 1799, ch. 43, Sections 14, 15, 20 and 28, 1 Stat. 733, 736-740. In fact, the Court has unanimously concluded that Congress may constitutionally require state courts to enforce federal penal statutes. *Testa* v. *Katt*, 330 U.S. 386 (1947). Simply stated, "the Constitution does not require that all persons charged with federal crimes be tried in Art. III courts." *Swain* v. *Pressley*, *supra*, 430 U.S. at 382-383; see *Palmore* v. *United States*, *supra*, 411 U.S. at 407. As is true in the civil context, Congress may delegate administration of criminal justice to Article I tribunals as well as to state courts. See, *e.g.*, *Palmore* v. *United States*, *supra*; *Swain* v. *Pressley*, *supra*; *In re Ross*, *supra*.

2. The question of what limits, if any, Article III places on the congressional power to create Article I

[20] By contrast, Article III, Sec. 2, cl. 3 guarantees the right to a jury trial in the state of the offense in all criminal cases except impeachment.

or legislative courts has not been fully explored by this Court. Although we are aware of no decision of the Court holding that an act of Congress establishing a non-Article III tribunal to adjudicate legal claims violates Article III, we assume, *arguendo*, that Article III bars Congress from essentially replacing an independent judiciary with Article I courts.[21] Cf. *O'Donoghue* v. *United States*, 289 U.S. 516, 530-531 (1933). Nonetheless, there is no doubt that at a minimum "the requirements of Art. III * * * must in proper circumstances give way to accommodate plenary grants of power to Congress to legislate with respect to specialized areas having particularized needs and warranting distinctive treatment." *Palmore* v. *United States*, *supra*, 411 U.S. at 407-408. Accordingly, we submit that even if the Act is viewed as creating an Article I magistrate's court (but see point IIB, *infra*), Section 636(b)(1)(B) falls well within the limits of Congress' power.

For example, in *Palmore* v. *United States*, *supra*, the Court upheld Congress' decision to give exclusive jurisdiction over criminal prosecutions arising under the District of Columbia (federal) laws to Article I courts. The Court concluded that this exercise of

[21] Certainly the language of Article III does not appear to constitute such a limitation. Moreover, it has been suggested that Article III is satisfied so long as an appeal to an Article III tribunal is available regarding federal questions. See *Swain* v. *Pressley*, *supra*, 430 U.S. at 382 n.16; Silberman, *Masters and Magistrates Part II: The American Analogue*, 50 N.Y.U.L. Rev. 1297, 1316-1317 (1975).

congressional power over the District of Columbia[22] did not run afoul of Article III because of the perceived need "to relieve the regular Art. III courts * * * from the smothering responsibility for [a] great mass of litigation * * *." 411 U.S. at 408-409. In light of the nature of the caseload assigned to the Article I tribunals, Congress could constitutionally address the court congestion problem without creating additional Article III judgeships. See *id.* at 409-410.

So too here, Congress constitutionally authorized district courts to delegate various pretrial matters to magistrates as a means of alleviating the enormous crush of litigation in the district courts. See, *e.g.*, H.R. Rep. No. 94-1609, *supra*, at 4-7, 13; S. Rep. No. 94-625, *supra*, at 2-5; pages 23-25, *supra*. Congress has plenary power to enact, and to dictate the means of enforcing, federal criminal laws and "[t]o constitute Tribunals inferior to the Supreme Court." Art. I, sec. 8, cl. 9; *De Costa* v. *Columbia Broadcasting System, Inc.*, 520 F.2d 499, 503 n.3 (1st Cir. 1975), cert. denied, 423 U.S. 1073 (1976). Given the limited nature of the delegation under 636(b)(1)(B) and the greater flexibility and lesser cost of magistrates as compared to judges, here (as in *Palmore*) Congress was entitled to employ Article I tribunals to aid the district courts in the administration of justice. In short, Section 636(b)(1)(B) does not represent an attempt by Congress to eliminate

[22] See Art. I, Sec. 8, cl. 17.

an independent judiciary, in violation of Article III. To the contrary, Congress has attempted merely to assist Article III judges in carrying out the critical judicial functions of conducting trials and rendering legal decisions.

Finally, the Court's cases regarding the military draft further demonstrate the constitutionality of Sections 636(b)(1)(B) and (C). In the *Selective Draft Law Cases*, 245 U.S. 366, 389 (1918), the Court summarily rejected the contention that a conviction for failing to submit to induction was invalid under Article III because the local draft boards and not the Article III court made the factual determinations regarding the defendant's eligibility for the draft. Hence, nothing in Article III precludes a federal prosecution brought in an Article III court based in part on factual findings determined by an Article I tribunal. See *Estep* v. *United States*, 327 U.S. 114 (1946); *McGee* v. *United States*, 402 U.S. 479, 483 (1971).[23] *A fortiori*, where, as here, the "Article I"

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[23] In *Estep*, the Court concluded that although even erroneous findings of the local board were ordinarily binding in the subsequent prosecution, a defendant was entitled to show that there was no basis in fact for the draft board's classification (327 U.S. at 122-123):

> It means that the courts are not to weigh the evidence to determine whether the classification made by the local boards was justified. The decisions of the local boards made in conformity with the regulations are final even though they may be erroneous. The question of jurisdiction of the local board is reached only if there is no basis in fact for the classification which it gave the registrant.

tribunal is limited to making *proposed* findings about the admissibility of evidence in a pending criminal prosecution, and those findings and recommendations are subject to a de novo determination by the Article III court, the defendant's Article III rights are fully protected.

B. The District Court's De Novo Determination Of The Suppression Motion In Accordance With Section 636(b)(1)(C) Satisfies The Requirements of Article III

We have demonstrated above that there is no Article III impediment to the creation of an Article I magistrate's court to decide suppression motions. We submit, however, that in amending the Act in 1976 Congress was far more solicitous of Article III considerations, including the integrity and independence of the judiciary. In the first instance, magistrates are appointed by and subject to removal by a majority of the (Article III) judges in the district court or courts in which the magistrate sits. See 28 U.S.C. 631(a), (h). Moreover, the district court has initial and unfettered discretion to decide whether to designate a magistrate to hold an evidentiary hearing concerning a suppression claim. Thereafter, the magistrate conducts the hearing under the aegis of the Article III court, and his proposed findings and recommendations are subject to a de novo determination "by the judge who * * * then exercise[s] the ultimate authority to issue an appropriate order." S. Rep. No. 94-625, *supra*, at 3. See, *e.g.*, *id.* at 2, 5-6,

9-10; H.R. Rep. No. 94-1609, *supra*, 3-5, 7-8, 10-11; S. Rep. No. 371, *supra*, at 12. Finally, the district court retains the power to rehear all or part of the live testimony.

Thus, the magistrate does not function independently of the district court. Rather, a magistrate is an adjunct to the Article III decision-maker, essentially performing the same tasks that a master or admiralty commissioner might perform.[24] The constitutionality of using such non-Article III entities to conduct evidentiary hearings or otherwise to aid in the determination of facts is not subject to question. As the Court pointed out in *Crowell* v. *Benson*, *supra*, 285 U.S. at 51-52 (emphasis supplied; footnotes omitted):

> [T]here is no requirement that, in order to maintain the essential attributes of the judicial power, all determinations of fact in constitutional courts shall be made by judges. On the common law side of the Federal courts, the aid of juries is not only deemed appropriate but is required by the Constitution itself. In cases of equity and admiralty, it is historic practice to call to the assistance of the courts, without the consent of the parties, masters and commissioners or assessors, to pass upon certain classes of questions * * *. *While the reports of masters and commissioners in such cases are essentially of an advisory nature, it has not been the practice to disturb their findings when they are properly based upon evidence, in the absence of errors of law, and the parties have no right to demand that the court shall redetermine the facts thus found.*

[24] The magistrate has venerable antecedents in both American and English practice. See generally Silberman, *Masters and Magistrates Part I: The English Model*, 50 N.Y.U.L. Rev. 1070 (1975); Silberman, *Masters and Magistrates Part II: The American Analogue*, 50 N.Y.U.L. Rev. 1297 (1975); *Hearing on S. 1283*, *supra*, at 6; *Mathews* v. *Weber*, *supra*, 423 U.S. at 268-269, n.4. Indeed, this Court, which is also subject to the constraints of Article III, routinely refers cases arising under its original jurisdiction to special masters for extensive fact-finding purposes.

Similarly, there can be no serious question that Congress may constitutionally direct—or, as here, permit—the district courts to refer a suppression motion to a magistrate for an evidentiary hearing. Article III does not limit Congress' power to alter the mode of proceeding in the district court, as opposed to removing the proceeding from the district court altogether. See, *e.g.*, *Holiday* v. *Johnston*, 313 U.S. 342, 352 (1941) (Congress has power to permit reference of a habeas corpus petition to non-Article III commissioner for an evidentiary hearing); *Crowell* v. *Benson*, *supra*, 285 U.S. at 52-54; *Ex parte Peterson*, 253 U.S. 300, 312-313 (1920); Note, *Masters and Magistrates in the Federal Courts*, 88 Harv. L. Rev. 779, 787-789, 794, 803 (1975); Silberman, *Masters and Magistrates Part II*, *supra*, 50 N.Y.U. L. Rev. at 1310-1314.[25] In sum, as the court of ap-

[25] With regard to some civil and criminal trials, Congress' power to delegate the factfinding function is, of course, limited by the Sixth and Seventh Amendments.

peals concluded (Pet. App. 14a), because under Section 636(b)(1)(C) an Article III court retains "the ultimate adjudicatory power over [suppression] motions" (H.R. Rep. No. 94-1609, *supra*, at 11; S. Rep. No. 94-625, *supra*, at 10), the Act satisfies Article III concerns.

It is therefore not surprising that the overwhelming weight of authority supports the conclusion that the procedures sanctioned by the Act do not violate Article III. At least two Members of this Court and four courts of appeals have agreed that Article III does not bar a magistrate from conducting an evidentiary hearing, at least so long as the district court retains the power to make the final decision. *Wingo* v. *Wedding*, *supra*, 418 U.S. at 486-487 & n.11 (Burger, C.J., joined by White, J., dissenting); *Hill* v. *Jenkins*, 603 F.2d 1256, 1258 (7th Cir. 1979); *Muhich* v. *Allen*, *supra*, 603 F.2d at 1250-1251; *Sick* v. *City of Buffalo*, 574 F.2d 689, 693 & n.17 (2d Cir. 1978); *Loral Corp.* v. *McDonnell Douglas Corp.*, 558 F.2d 1130, 1133 (2d Cir. 1977); *Cruz* v. *Hauck*, 515 F.2d 322, 328-330 (5th Cir. 1975), cert. denied, 424 U.S. 917 (1976); *Campbell* v. *United States District Court*, *supra*, 501 F.2d at 200-201.[26] The great ma-

[26] See also *Mathews* v. *Weber*, *supra*, 423 U.S. at 269-270; *Bowman* v. *Bordenkircher*, 522 F.2d 209, 210 (4th Cir. 1975); *United States ex rel. Henderson* v. *Brierley*, 468 F.2d 1193, 1194-1195 (3d Cir. 1972). The First and Sixth Circuits have stated that a magistrate's final determination of a claim raises serious Article III questions in the absence of the parties' consent. Compare *United States* v. *Edwards*, 602 F.2d 458, 467 n.8 (1st Cir. 1979), with *De Costa* v. *Columbia*

jority of commentators have also supported this view. See, *e.g.*, Shapiro, *Federal Habeas Corpus: A Study in Massachusetts*, 87 Harv. L. Rev. 321, 365 (1973); Note, *Masters and Magistrates in the Federal Courts*, *supra*, 88 Harv. L. Rev. at 787-789; Silberman, *supra*, 50 N.Y.U. L. Rev. at 1310-1317; Comment, *An Expanding Civil Role For United States Magistrates*, *supra*, 26 Am. U. L. Rev. 66, 74-82 (1976); Note, *Proposed Reformation of Federal Habeas Corpus Procedure: Use of Federal Magistrates*, 54 Iowa L. Rev. 1147, 1159-1162 (1969). In these circumstances, deference to Congress' considered judgment on this question is appropriate. See S. Rep. No. 94-625, *supra*, at 6; H.R. Rep. No. 94-1609, *supra*, at 8; note 17, *supra*.

Broadcasting System, Inc., 520 F.2d 499 (1st Cir. 1975). See *Ellis* v. *Buchkoe*, 491 F.2d 716, 717 (6th Cir. 1974). In this case, of course, the magistrate merely submitted a recommendation to the district court, which made the final determination of the suppression motion.

The Eighth Circuit has indicated that a magistrate may constitutionally conduct a hearing but that if a party objects to the magistrate's findings, the district court may be required under Article III to rehear the testimony. See *Noorlander* v. *Ciccone*, 489 F.2d 642, 648 (8th Cir. 1973). For the reasons stated above, we believe that this suggestion, which was not preceded by any analysis and was not necessary to the disposition of the case, is incorrect.

III. DETERMINATION OF A SUPPRESSION MOTION IN ACCORDANCE WITH 28 U.S.C. 636(b)(1)(B) DOES NOT DEPRIVE A DEFENDANT OF DUE PROCESS OF LAW

A. Introduction

The principal issue in this case is whether the procedures set forth by Congress in the Federal Magistrates Act deprive a defendant of due process insofar as they allow a district court to deny a motion to suppress evidence based on the proceedings before the magistrate, the magistrate's report, and the submissions of the parties—but without an evidentiary hearing conducted by the court itself. To be sure, a defendant is entitled to an evidentiary hearing regarding the admissibility of his inculpatory statements. See, *e.g.*, *Jackson* v. *Denno*, 378 U.S. 368 (1964). But respondent received a full and fair hearing before the magistrate, and he does not contend otherwise.[27] In light of the evidence offered at the hearing, the magistrate reasonably found that the testimony of the Chicago police officer and the federal agents was more credible than that of respondent, and he therefore recommended that the motion to suppress be denied.[28] Thereafter, the district court made

[27] Respondent does not assert that the hearing was in any way inadequate, except that it was presided over by the magistrate and not an Article III judge. See point II, *supra*.

[28] Respondent, who has a substantial criminal record (see page 9, *supra*), repeatedly claimed that he made no statements at all when he was arrested on August 8, 1976, despite his counsel's best efforts to make him recall such statements (Tr. 123-125, 127-130, 149-153). Officer Vollick of the Chicago Police Department and the contemporaneous police report of the arrest both unequivocally stated that respondent, after being advised of his rights, admitted bringing the gun with him when he went to "discuss" a family matter with Batson (Tr. 4-5, 14-15, 21, 31-32, 149-153). Those statements coincide with respondent's statement of January 12, 1977, which respondent does not deny making and which, of course, could not have been known to the Chicago police at the time the report was prepared in August 1976. Moreover, respondent admitted lying to the police in November 1976. Finally, his claim that he had been promised immunity by the ATF agents was flatly denied by those agents. See pages 6-9, *supra*.

a de novo review of the suppression claim, agreed with the magistrate's proposed findings and recommendations, and denied respondent's motion. In our view, these extensive proceedings met the requirements of due process.

Neither common sense nor precedent supports the court of appeals' contrary conclusion. The court below held that the Due Process Clause requires the district court either to rehear the testimony previously adduced before the magistrate or to defer to the magistrate's evaluation of that testimony. However, as the court conceded (Pet. App. 18a), the statute itself precludes the latter alternative; the district court must make a de novo determination of the suppression issue. But even more important, at least where, as here, the district court decides to adopt the magistrate's proposed findings and recommendations, the Act's requirement that the district court determine the suppression claim de novo accords a defendant *greater* procedural safeguards than that

provided by a standard of deferential review: if the district court had deferred to the magistrate, rather than determined the matter de novo, the court obviously would have again accepted the magistrate's report and would have again denied respondent's motion. That the court's more thorough review of the record gave respondent a second substantial opportunity to establish his suppression claim surely cannot violate due process. See, *e.g.*, *Wingo* v. *Wedding*, *supra*, 418 U.S. at 486-487 (Burger, C.J., dissenting); *Mildner* v. *Gulotta*, 405 F. Supp. 182, 195 (E.D. N.Y. 1975) (three-judge court), aff'd mem., 425 U.S. 901 (1976); *United States* v. *Whitmire*, *supra*, 595 F.2d at 1305-1306 & n.1; *Loral Corp.* v. *McDonnell Douglas Corp.*, *supra*, 558 F.2d at 1133.

The inexorable logic of this position is also supported by the cases interpreting the Due Process Clause. Due process is, of course, a flexible concept, varying in accordance with "the precise nature of the government function involved as well as of the private interest that has been affected." *Cafeteria & Restaurant Workers Union, Local 473* v. *McElroy*, 367 U.S. 886, 895 (1961). See, *e.g.*, *Greenholtz* v. *Inmates of the Nebraska Penal and Correctional Complex*, No. 78-201 (May 29, 1979), slip op. 10; *Wolff* v. *McDonnell*, 418 U.S. 539, 560 (1974); *Morrissey* v. *Brewer*, 408 U.S. 471, 481 (1972). The Court has identified three factors that must be weighed in order to determine what process is due in a particular circumstance (*Mathews* v. *Eldridge*, 424 U.S. 319, 335 (1976)):

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Accord, *Mackey* v. *Montrym*, No. 77-69 (June 25, 1979), slip op. 8; *Parham* v. *J.L.*, No. 75-1690 (June 20, 1979), slip op. 13-14; *Greenholtz* v. *Inmates of the Nebraska Penal and Correctional Complex*, *supra*, slip op. 10. We submit that the Act appropriately balances these factors.

B. The court of appeals erroneously equated respondent's interest in the outcome of the suppression hearing with his interest in the criminal trial itself

The court of appeals' analysis is premised on the erroneous notion that a suppression motion is "in effect the prosecution" (Pet. App. 17a) and that therefore the process due respondent at that proceeding is equivalent to the procedural protections that must be accorded at the criminal trial itself. See also Pet. App. 16a, 21a-24a. This Court has repeatedly emphasized, however, that the suppression remedy is ordinarily concerned with the deterrence of official misconduct or other societal interests and not with the more fundamental determination of guilt or innocence. See, *e.g.*, *United States* v. *Janis*, 428 U.S. 433, 453-454 (1976); *United States* v. *Peltier*, 422

U.S. 531, 535-536, 538-539 (1975); *Lego* v. *Twomey*, 404 U.S. 477, 484-489 (1972); *Rogers* v. *Richmond*, 365 U.S. 534, 540-544 (1961). In the Fourth Amendment area, for example, the Court has remarked that the exclusion of relevant evidence, while important as a means of compelling "respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it" (*Elkins* v. *United States*, 364 U.S. 206, 217 (1960)), nonetheless "deflects the truthfinding process and often frees the guilty." *Stone* v. *Powell*, 428 U.S. 465, 490 (1976). Similarly, where, as in this case, the defendant claims that his confession was involuntary, the remedy of suppression is "designed to safeguard the [Fifth Amendment] right[s] of an individual, entirely apart from his guilt or innocence * * *." *Lego* v. *Twomey*, *supra*, 404 U.S. at 485. Hence, the accused's paramount interest in liberty is not directly at risk at a suppression hearing.

Indeed, the defendant's stake in the outcome of a suppression hearing is significantly less than the individual interests implicated by various civil proceedings. Insofar as the government's burden of proof in a particular kind of proceeding is compelled by the Due Process Clause, it "indicate[s] the relative importance attached to the ultimate decision." *Addington* v. *Texas*, No. 77-5992 (Apr. 30, 1979), slip op. 4. See *In re Winship*, 397 U.S. 358, 370 (1970) (Harlan, J., concurring). As the Court held in *Lego* v. *Twomey*, *supra*, 404 U.S. at 489, the prosecution need demonstrate the voluntariness of a challenged

confession only by a preponderance of the evidence. In contrast, the government bears a burden of proof by clear and convincing evidence in a number of civil contexts, including commitment to a mental institution (*Addington* v. *Texas*, *supra*), deportation (*Woodby* v. *INS*, 385 U.S. 276, 285 (1966)), and denaturalization (*Chaunt* v. *United States*, 364 U.S. 350, 353 (1960); *Schneiderman* v. *United States*, 320 U.S. 118 (1943)). Compare also *United States* v. *Matlock*, *supra*, 415 U.S. at 172-175 (hearsay admissible in suppression hearing), with *Bridges* v. *Wixon*, 326 U.S. 135, 153-154 (1945) (hearsay inadmissible in deportation proceeding).

Moreover, the fact that this preliminary motion occurs in the context of a criminal case, a factor that the court of appeals believed significant (Pet. App. 16a), does not change the analysis. There is a substantial "difference in the *quanta* and modes of proof required to establish" guilt in a criminal case on the one hand and a constitutional violation giving rise to the exclusion of relevant evidence on the other. *Brinegar* v. *United States*, 338 U.S. 160, 173 (1949). In addition to the significant contrast in the burdens of proof applicable to the two proceedings, the government may rely on hearsay evidence in a suppression proceeding even though that same evidence would be inadmissible at trial. See *Brinegar* v. *United States*, *supra*, 338 U.S. at 172-174; *United States* v. *Matlock*, *supra*, 415 U.S. at 172-177; Fed. R. Evid. 104(a), 1101(d)(1). And whereas the Due Process Clause requires that the government disclose an in-

formant's identity at the trial itself if his identity "is relevant and helpful to the defense of an accused" (*Roviaro* v. *United States*, 353 U.S. 53, 60-61 (1957)), there is no such constitutional compulsion at the suppression hearing. See *McCray* v. *Illinois*, 386 U.S. 300 (1967). In short, the process due at a pretrial hearing, even in a criminal case, is considerably less elaborate than the procedural safeguards constitutionally required to protect a criminal defendant at trial.

C. Determination Of A Suppression Motion In Accordance With Section 636(b)(1)(B) Sufficiently Minimizes The Risk That Unconstitutionally Obtained Evidence Will Be Erroneously Admitted At Trial

As we have demonstrated above, suppression motions in general, and those regarding involuntary confessions in particular, ordinarily do not implicate the guilt or innocence of a defendant. See, *e.g.*, *Lego* v. *Twomey*, *supra*; *Jackson* v. *Denno*, *supra*, 378 U.S. at 376-377; *Rogers* v. *Richmond*, *supra*, 365 U.S. at 540-544. Therefore, "[s]ince the purpose that a voluntariness hearing is designed to serve has nothing whatever to do with improving the reliability of jury verdicts," *Lego* v. *Twomey*, *supra*, 404 U.S. at 486, reference of suppression motion to a magistrate poses no "risk of an erroneous deprivation of" a defendant's liberty. See *Mathews* v. *Elridge*, *supra*, 424 U.S. at 335; *Califano* v. *Yamasaki*, No. 77-1511 (June 20, 1979), slip op. 13. Rather, all that is in issue is the proper application of the exclusionary

rule in a particular case. We submit that Sections 636(b)(1)(B) and (C) adequately protect a defendant's interest in this regard.

1. Neither respondent nor the court of appeals suggests that, as a matter of due process, an impartial magistrate could not conduct a suppression hearing, so long as the district court thereafter deferred to the magistrate's findings. The concession is well-warranted. Due process does require "a reliable and clear-cut determination of the voluntariness of the confession." *Jackson* v. *Denno*, *supra*, 378 U.S. at 391. It matters not, however, whether the trial judge, another judge, a jury other than the trial jury, or any other competent tribunal, resolves the question of voluntariness. See *id.* at 391 n.19; *Lego* v. *Twomey*, *supra*, 404 U.S. at 484 n.9. An impartial magistrate is as capable as a judge or a jury of making a reliable determination of the relative credibility of respondent and the three government agents. Therefore, where, as here, the magistrate is impartial and the defendant is given a full opportunity to present evidence and cross-examine the government's witnesses, the hearing itself does not deprive the defendant of due process. See *Jackson* v. *Denno*, *supra*.

Thus, respondent must base his due process claim solely on the fact that the district court made a thorough ("de novo") review of the magistrate's proposed findings rather than simply deferring to them. Whatever validity that argument might have in other contexts (see pages 52-55, *infra*), it certainly has no merit in the circumstances of this case. As we have already pointed out, at least in those cases

in which the district court ultimately adopts the magistrate's proposed findings, the Act ensures that the aggrieved party has two substantial opportunities to present his case prior to review in the court of appeals. Had the district court simply deferred to the magistrate, respondent would have had only one bite at the apple. The district court's de novo determination of respondent's suppression motion therefore enhanced the reliability of the magistrate's initial findings against respondent. As the Fifth Circuit recently explained (*United States* v. *Whitmire*, *supra*, 595 F.2d at 1305):

> [Sections 636(b)(1)(B) and (C)] provide sufficient safeguards both to ensure the integrity of the factfinding process and retention by the judge of final responsibility for ruling on the motion. Indeed, the factfinding process may be improved by the referral practice. In making a final determination, the district court has the benefit of a carefully developed record, a magistrate's thoughtful consideration of the issues, and argument of counsel regarding specifics not agreeable to the parties.

Determination of a suppression motion in accordance with the Act is thus at least as reliable as the deferential review approved by the court of appeals. In addition, there is no reason to believe that even a two-hearing requirement would appreciably improve the accuracy of the suppression decision. No set of procedures—including a second hearing conducted by the district judge—can totally eliminate the risk of erroneous factfinding in the event that there is a

conflict in the testimony. See *Speiser* v. *Randall*, 357 U.S. 513, 525 (1958). Moreover, it is not self-evident that the district court's appraisal of the demeanor evidence would be more accurate than the magistrate's previous evaluation of the witnesses' credibility. Indeed, there is a strong possibility that a second hearing would be a less accurate gauge of the truth, since the witnesses will have had an opportunity to rehearse their story and to shape their testimony. In any event, this Court has made clear that a defendant has no constitutional right even to an appeal in a criminal case, much less to two full suppression hearings in the district court. See, *e.g.*, *Griffin* v. *Illinois*, 351 U.S. 12, 18 (1956); *McKane* v. *Durston*, 153 U.S. 684, 687-688 (1894).

2. The reliability and, we submit, constitutionality of the Magistrates Act procedures are further evidenced by the widespread use of similar factfinding processes in numerous situations involving quite substantial private interests. In virtually every administrative agency, the ultimate factfinder is a commission, board or administrator that has not personally heard the witnesses testify. Most often, the findings are based on a de novo review of the record developed before an administrative law judge or hearing officer and the submissions of the parties. See, *e.g.*, 5 U.S.C. 557 (general rule under the APA); 29 U.S.C. 160(c) (NLRB); 33 U.S.C. 921(b)(3) (Benefits Review Board); 17 C.F.R. 201.17(g)(2) (SEC); 17 C.F.R. 10.104 (CFTC); 20 C.F.R. 404.939(a), 404.950(c), 416.1457(a), 416.1469 (Social Security Adminis-

tration). Although the administrative factfinder neither hears the live testimony nor defers to the subordinate tribunal that has, there is no doubt as to the validity of such procedures, provided that the factfinder reviews the evidence in some rational fashion. See, *e.g.*, *Morgan* v. *United States*, 298 U.S. 468 (1936); *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474, 492-497 (1951); *Utica Mutual Insurance Co.* v. *Vincent*, 375 F.2d 129, 131-132 (2d Cir.), cert. denied, 389 U.S. 839 (1967); 2 K. Davis, *Administrative Law Treatise* §§ 11.02 & 11.03 (1958). See also *Richardson* v. *Perales*, 402 U.S. 389 (1971).[29]

In fact, it is well settled that the administrative tribunal may reject the initial findings of the hearing

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[29] *Morgan* involved a decision of the Secretary of Agriculture regarding the maximum allowable prices to be charged by livestock marketing agencies. These agencies claimed that the administrative proceedings had deprived them of due process because the Secretary had made his decision without reviewing the administrative record at all. The Court agreed, observing that "[i]f the one who determines the facts which underlie the order has not considered evidence or argument, it is manifest that the hearing has not been given." 298 U.S. at 480-481. As the Court explained, however, "consideration of the evidence" does not mean that the factfinder must hear the actual testimony:

> This necessary rule does not preclude practicable administrative procedure in obtaining the aid of assistants in the department. Assistants may prosecute inquiries. Evidence may be taken by an examiner. Evidence thus taken may be sifted and analyzed by competent subordinates. Argument may be oral or written. The requirements are not technical. But there must be a hearing in a substantial sense.

Id. at 481.

officer without rehearing the testimony even when the initial findings are based on credibility determinations. See *Universal Camera Corp.* v. *NLRB*, *supra*, 340 U.S. at 492-497. In those circumstances, the administrative findings must be given the deference to which they are otherwise entitled; however, in determining whether there is substantial evidence in the record as a whole to support those findings, a reviewing court is permitted to take into acount the fact that "an impartial, experienced examiner who has observed the witnesses and lived with the case has drawn [different] conclusions." *Id.* at 496.

Accordingly, even where the magistrate recommends that a suppression motion be granted, a district court could reliably and constitutionally make a de novo determination to deny the motion without rehearing the evidence. *Mildner* v. *Gulotta*, *supra*, 405 F. Supp. at 195.[30] To be sure, if the sup-

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[30] Relying on *United States ex rel. Graham* v. *Mancusi*, 457 F.2d 463 (2d Cir. 1972), the court of appeals suggested (Pet. App. 21a-22a) that this substantial body of administrative law was inapplicable because this was a criminal case. But see *Mildner* v. *Gulotta*, *supra* (disbarment proceeding). However, as we have already emphasized, the process due at a suppression hearing is not equivalent to that required at a criminal trial. See pages 45-48, *supra*. *Mancusi* is also factually distinguishable. There the question was whether an appellate court could convict a defendant of a lesser included offense after it reversed the conviction for the greater offense because the trial court had admitted the defendant's involuntary confession. Since that confession related to both the greater and lesser offenses and since no jury had ever passed upon defendant's guilt of the lesser offense in the absence of the tainted evidence, the court of

pression hearing were solely a swearing contest between a government agent and the defendant, and if one statement were not inherently more credible than the other, a district court could not arbitrarily disregard the magistrate's proposed findings if those findings were based on the demeanor of the witnesses. In such a circumstance, the district court might well be required to adopt the magistrate's proposed findings or to rehear the testimony in order to make its own credibility determination. See *United States* v. *Bergera*, 512 F.2d 391 (9th Cir. 1975).[31] But that situation is a far cry from the realities of this case. Objective factors, such as respondent's prior criminal record, his admitted lies to the police on November

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appeals correctly concluded that the defendant had been denied due process and the right to a jury trial. 457 F.2d at 468-469. Here, in contrast, an impartial magistrate made specific findings regarding respondent's testimony in the suppression hearing and the district court made a de novo determination based on its review of the entire record including the magistrate's report.

[31] We do not agree with the Ninth Circuit that the district court must always rehear the testimony if it rejects the magistrate's proposed findings. If, as here, there are objective factors in the record justifying the court's conclusion, neither due process nor the Act requires that the district court hear the evidence previously evaluated by the magistrate. This issue is not presented in this case, however, and respondent may not complain because invocation of the Act in other circumstances might raise more difficult constitutional questions. See *United States* v. *Raines*, 362 U.S. 17 (1960). Cf. *Califano* v. *Yamasaki*, *supra*, slip op. 13 ("The nature of the due process hearing is shaped by the 'risk of error inherent in the truthfinding process as applied to the generality of cases, not the rare exceptions.' ").

19, his implausible testimony regarding his arrest on August 8, and the consistent and corroborating statements of three law enforcement officers, all supported the district court's de novo decision to deny the suppression motion regardless of the magistrate's recommendation. See note 28, *supra*. More important, it is worth repeating that here the district court fully adopted the magistrate's proposed findings and recommendation.

D. Substantial Economic And Administrative Considerations Justify Use Of Magistrates To Conduct Pretrial Evidentiary Hearings

The final factor that must be considered in determining what procedures are constitutionally required in a particular circumstance is "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews* v. *Eldridge*, *supra*, 424 U.S. at 335. See, *e.g.*, *Richardson* v. *Perales*, *supra*, 402 U.S. at 406; *Gagnon* v. *Scarpelli*, 411 U.S. 778, 788 (1973). Even in the context of the criminal trial itself, "[d]ue process does not require that every conceivable step be taken, at whatever cost, to eliminate the possibility of convicting an innocent person." *Patterson* v. *New York*, 432 U.S. 197, 208 (1977). Where, as here, Congress has provided a reasonable and reliable means of handling pretrial litigation not relating to the guilt or innocence of defendants, the court of appeals should have taken the "fiscal and administrative burdens" into account.

First, underlying the enactment and subsequent amendments of the Act is "Congress' recognition that a multitude of new statutes and regulations had created an avalanche of additional work for the district courts which could be performed only by multiplying the number of judges or giving judges additional assistance." *Mathews* v. *Weber*, *supra*, 423 U.S. at 268; see, *e.g.*, *Wingo* v. *Wedding supra*, 418 U.S. at 463; S. Rep. No. 94-625, *supra*, at 2-5; H.R. Rep. No. 94-1609, *supra*, at 4-7. See also pages 23-24 & note 14, *supra*. In particular, Congress empowered magistrates to hold pretrial evidentiary hearings so that the district courts could spend more time conducting the actual trials, many of which were subject to the mandatory provisions of the Speedy Trial Act of 1974, 18 U.S.C. 3161 *et seq.* See, *e.g.*, H.R. Rep. No. 94-1609, *supra*, at 4, 7; S. Rep. No. 94-625, *supra*, at 3-5; *Hearings on S. 1283*, *supra*, at 1, 4-7, 17-18, 36. The frequent and growing use of magistrates to conduct pretrial hearings strongly indicates that the Act is effectuating the congressional purpose. See page 25 & note 15, *supra*.

Thus, the conclusion that due process compels a district court to rehear testimony already heard by an impartial magistrate is directly at odds with the substantial public interest in relieving the overburdened courts. As we have previously indicated, the court of appeals' decision will result either in two virtually identical, full-dress evidentiary proceedings or (more likely) in discontinued use of magistrates in a substantial number of cases. See pages 24-26, *supra*. The consequent cost in terms of increased court congestion

is simply too high a price to pay for the minimal benefits, if any, that would be derived from a two-hearing requirement. See *Richardson* v. *Perales*, *supra*, 402 U.S. at 406.

Finally, Congress' decision to enlist the aid of magistrates rather than increase the number of district judges reflects significant fiscal and administrative policies. The cost of creating and annually funding a judgeship is at least twice that of a magistracy. See, *e.g.*, *Hearings on S. 1283*, *supra*, at 4 ("It is our considered judgment that we cannot continue to cope with this problem [of growing caseloads] by increasing the number of district judges and the supporting staffs of law clerks, secretaries, court clerks, court reporters and other employees, with the concomitant need for huge additional physical space") (remarks of Judge Metzner on behalf of the Judicial Conference); Comment, *An Expanding Civil Role for United States Magistrates*, *supra*, 26 Am. U. L. Rev. at 68 n.8. Furthermore, in many instances a magistrate is a more flexible means of addressing the congestion problem. A magistrate may be hired part-time and may be readily assigned to different tasks in different court houses and even different districts as the need arises. See, *e.g.*, H.R. Rep. No. 94-1609, *supra*, at 9, 12-13. Given all of these factors, and in view of the other considerations mentioned above, Congress' decision to permit magistrates to conduct evidentiary hearings on pretrial motions in criminal cases, subject to the district court's de novo determination of the motion, is reasonable and fully consistent with the dictates of due process.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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